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There are several important exceptions to the general rule as stated above. A general power of eminent domain is sufficient; (1) where the new use will not destroy the old. *Louisville, etc., R. Co.* v. *City of Louisville*, 131 Ky. 108, 114 S. W. 743, 24 L. R. A. (N. S.), 1213. As in the case of a telegraph Company condemning a right of way on and along a railroad company's right of way, *Western, etc., R. Co.* v. *Western Union Tel. Co.*, 138 Ga. 420, 75 S. E. 471, 42 L. R. A. (N. S.) 225 and note; (2) where property has been previously devoted but has never been put to a public use or has ceased to be so used. *In re Board of Water Com'rs*, 138 Minn. 458, 165 N. W. 279. But appropriation does not have to be complete to be exempt. *New Haven Water Co.* v. *Wallingford*, 72 Conn. 293, 44 Atl. 235; and (3) where the use is permissive and may be abandoned at any time. *Diamond Jo Line Steamers* v. *Davenport*, 114 Iowa 432, 87 N. W. 399, 54 L. R. A. 859; *Re Board of Street Opening*, 133 N. Y. 329, 31 N. E. 102, 28 Am. St. Rep. 640, 16 L. R. A. 180.

See also the recent case of *Williamson County* v. *Franklin, etc., Co.* (Tenn.), 228 S. W. 714.

LANDLORD AND TENANT—AGREEMENT OF LANDLORD TO KEEP PREMISES IN REPAIR—LIABILITY FOR BREACH.—The defendant leased certain premises to the plaintiff agreeing "to keep the place in repair and safe to live in". There was a porch to the house which was not retained in the control of the landlord. This porch became unsafe and finally collapsed, killing the tenant. The administrator of the tenant brought an action against the landlord, under a death by wrongful act statute. *Held*, landlord liable. *Crowe* v. *Bixby* (Mass.), 129 N. E. 433. See NOTES, p. 647.

LIBEL AND SLANDER—PUBLICATION BY CHIEF OFFICER OF FRATERNAL ASSOCIATION TO MEMBERS.—The defendant was the chief executive officer of a fraternal association doing an insurance business and having social features. The organization owned and controlled a publication which was the official organ of the society, containing communications from the officers to the members and news items of special interest to the membership. This paper circulated among the members only. The plaintiff was an officer of a subordinate lodge and as a result of irregularities in its management, the defendant had an article published in the association's journal stating that the plaintiff was short in her accounts and was receiving commissions based on overrated *per capita* membership. The plaintiff brought an action alleging the statements to be libelous *per se* and the defendant set up the privilege of the occasion as a defense. *Held*, the communication qualifiedly privileged. *Peterson* v. *Cleaver* (Neb.), 181 N. W. 187.

A communication made in good faith upon any subject matter in which the party making it has an interest, or in reference to which he has a duty either public or private, either legal, moral, or social, if made to a person having a corresponding interest, is qualifiedly privileged and not actionable in the absence of express malice. *Cadle* v. *McIntosh*, 51 Ind. App. 365, 99 N. E. 779; *Shurtleff* v. *Stevens*, 51 Vt. 501, 31 Am. Rep. 698; *Bradley* v. *Heath*, 12 Pick. (Mass.) 163, 22 Am. Dec. 418; *Kirkpatrick* v. *Eagle Lodge*, 26 Kan. 384, 40 Am. Rep. 316; *Nichols*

v. *Eaton*, 110 Iowa 509, 81 N. W. 792, 80 Am. St. Rep. 319, 47 L. R. A. 483.

Hence a communication or publication made by a member of a fraternal order, addressed to the members of that order and concerning a subject which affects the general welfare of the organization, although libelous *per se*, is qualifiedly privileged. *Bayliss* v. *Grand Lodge of Louisiana*, 131 La. 579, 59 So. 996; *Graham* v. *State*, 6 Ga. App. 436, 65 S. E. 167; *Cadle* v. *McIntosh*, *supra*; *Wise* v. *Brotherhood of Locomotive Firemen and Enginemen*, 252 Fed. 961. In the last, a recently decided case, the secretary of a railroad brotherhood doing an insurance business was held to have a qualified privilege in a communication sent to a subordinate lodge, accusing one of its members, the plaintiff, of undertaking to defraud the brotherhood by collecting insurance for a self inflicted wound.

Like considerations arise and the same rule applies when a member of a church makes representations relative to the character, conduct or qualifications of a fellow member, to one having authority in the church to receive such charges for the purpose of removal, discipline or correction. *Pendleton* v. *Hawkins*, 42 N. Y. Supp. 626; *Howard* v. *Dickie*, 120 Mich. 238, 79 N. W. 191. The same is true as to members of religious or professional societies, provided the member addressed has a duty to perform or an interest to serve which makes the giving of the information to him proper. *Kersting* v. *White*, 107 Mo. App. 265, 80 S. W. 730; *McKnight* v. *Hasbrouck*, 17 R. I. 70, 20 Atl. 95.

The qualified privilege will not, however, be extended to protect the publication of defamatory matter made by a member of a fraternal organization, church or society, concerning another where no community of interest exists and the member addressed has no duty to perform or interest to subserve which renders the communication of the information to him necessary and essential to the well being of the organization. *Lovejoy* v. *Whitcomb*, 174 Mass. 586, 55 N. E. 322; *Ritchie* v. *Widdmer*, 59 N. J. L. 290, 35 Atl. 825.

MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY BY SERVANT TO "VOLUNTEER".—Defendant's servant without authority invited the minor plaintiff, nine years old, to assist in the unloading of the defendant's motor truck. While returning for another load the plaintiff was told by the servant to ride on the running board of the truck which the plaintiff was to assist in unloading. The servant driving the truck turned a corner at a rate of speed sufficient to throw the plaintiff off, thereby injuring him. Action for damages by the plaintiff and by the plaintiff's father for the loss of services; the cases were combined. In the court below the defendants took judgment by nonsuit. *Held*, judgment set aside and new trial ordered. *Kalmich* v. *White* (Conn.), 111 Atl. 845.

By the general doctrine one invited by an unauthorized servant to assist in the master's business and without the justification of emergency or a legitimate personal interest on the part of the invitee is a "volunteer" and trespasser. *Corrigan* v. *Hunter*, 139 Ky. 315, 122 S. W. 131, 130 S. W. 798, 43 L. R. A. (N. S.) 187, and note; 30 YALE LAW JOURN.